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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/970,594	10/04/2001	James A. Hellbusch		1193
31083	7590	03/21/2006		
THOMTE, MAZOUR & NIEBERGALL, L.L.C. 2120 S. 72ND STREET, SUITE 1111 OMAHA, NE 68124				
			EXAMINER MCKANE, ELIZABETH L	
			ART UNIT 1744	PAPER NUMBER

DATE MAILED: 03/21/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/970,594

Applicant(s)

HELLBUSCH ET AL.

Examiner

Leigh McKane

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 09 January 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1,2,4-7,9,12,13 and 15-25 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1,2,4-6,12,15-19 and 23-25 is/are allowed.
- 6) ☒ Claim(s) 7,9,13 and 20-22 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

1. Applicant's arguments, see page 10, filed 9 January 2006, with respect to the rejection(s) of claim(s) 7, 9, 13, and 20 under Nelson have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of Nelson and Bradley.

***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 7, 9, 13, and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nelson (U.S. Patent No. 4,510,114) in view of Bradley (U.S. 5,983,908).

With respect to claims 7, 9, and 13, Nelson teaches a system including a hopper **284** having upper and lower ends, inner and outer surfaces, and forward and rearward sides. A receiving tank **294**, having an open upper end, a closed lower end, and forward and rearward sides is in open communication with a lower end of the hopper. An elongated spray bar **286** located in an upper end of the hopper **284** oscillates and sprays fluid therefrom. Nelson is silent with respect to whether the receiving tank **294** has an opening formed at a lower end thereof and to a spray bar that oscillates about a longitudinal axis. With respect to the former, as the ice formed by the device will need to exit tank **294** for eventual use, it is deemed obvious to provide an opening at a lower end thereof for gravity discharge. See Figure 27; col.15, lines 19-36.

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Bradley discloses a fluid dispenser having a longitudinally oscillating spray bar **36**. The spray bar is disclosed by Bradley to be oscillated by a motor and to be “an improved oscillating spray mechanism” for completely contacting the intended surface with water. See col.2, lines 20-26. As the spray bar mechanism of Bradley is an improvement over prior art spray bars (like that of Nelson) and is capable of better fluid contact on the intended surface, it would have been an obvious substitution for the spray bar of Nelson.

With respect to claim 20, as to the lower end of the hopper and the upper end of the receiving tank being “adapted to be received by the collection bucket of a mobile vehicle,” it has been held that the recitation that an element is “adapted to” perform a function is not a positive limitation but only requires the ability to so perform. It does not constitute a limitation in any patentable sense. *In re Hutchison*, 69 USPQ 138. It is submitted that the apparatus of Prazmowski is certainly capable of being received by the collection bucket of a mobile vehicle.

4. Claim 21 is rejected under 35 U.S.C. 103(a) as being unpatentable over Nelson and Bradley as applied to claim 1 above, and further in view of Reilly et al (U.S. Patent No. 5,775,237).

Nelson is silent with respect to an observation window formed on the outer surface of the hopper. Reilly et al, however, discloses the known use of observation windows **60** in hoppers for monitoring ash levels within each hopper. It would have been obvious to provide an observation window in the hopper of Nelson for the same reason – that is, to provide an indication of the ice level in the hopper.

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5. Claim 22 is rejected under 35 U.S.C. 103(a) as being unpatentable over Nelson and Bradley as applied to claim 1 above, and further in view of Neal et al (U.S. Patent No. 4,863,277).

Nelson is silent with respect to a float switch connected to the inner surface of the hopper. Neal et al discloses a blending system for fertilizer wherein a hopper **60** is filled with dry materials, the level of which is monitored and controlled by float level sensor **64**. The level within hopper **18** is controlled by float **119**. See col.1, lines 39-42; col.4, lines 6-13 and lines 66-67. As Neal et al teaches that the float switch prevents overfilling of the hopper, it would have been an obvious modification of Nelson.

*Allowable Subject Matter*

6. Claims 1, 2, 4-6, 12, 15-19, and 23-25 are allowed.

7. The following is a statement of reasons for the indication of allowance:

With respect to claim 23, there is no teaching or suggestion in Nelson to provide a spray bar having holes such that the distance between holes proximate the midpoint of the spray bar is smaller than the distance between the holes proximate the opposite ends of the spray bar. With respect to claim 24, there is no teaching or suggestion to provide a spray bar having holes of varying diameter with the claimed hopper. With respect to claim 25, the prior art of record fails to teach or suggest a pivotally movable receiving tank in combination with a hopper and rotatably mounted spray bar.

***Response to Arguments***

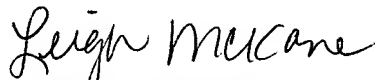
8. Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Leigh McKane whose telephone number is 571-272-1275. The examiner can normally be reached on Monday-Thursday (5:30 am-2:00 pm).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gladys Corcoran can be reached on 571-272-1214. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
**Leigh McKane**  
**Primary Examiner**  
**Art Unit 1744**